

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

MAR 30 2007

COURT OF APPEALS
DIVISION TWO

DENNIS PAUL EDDY,)	
)	2 CA-CV 2006-0105
Petitioner/Appellant,)	DEPARTMENT B
)	
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
STATE OF ARIZONA and)	Rule 28, Rules of Civil
DEPARTMENT OF CORRECTIONS,)	Appellate Procedure
)	
Respondents/Appellees.)	
)	

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. CV200600008

Honorable Stephen F. McCarville, Judge

AFFIRMED

Dennis Paul Eddy

Florence
In Propria Persona

Terry Goddard, Arizona Attorney General
By Wanda E. Hofmann

Tucson
Attorneys for Respondents/Appellees

E S P I N O S A, Judge.

¶1 Petitioner/Appellant Dennis Eddy appeals from the trial court's denial of his petition for a writ of habeas corpus. We affirm.

Factual Background

¶2 Eddy began serving three, concurrent, life sentences in January 1992. He is required to serve a minimum of twenty-five years before becoming eligible for parole. Through violations of Arizona Department of Corrections (ADOC) policies and regulations, he forfeited certain earned release credits and his parole eligibility date was extended.

¶3 In his petition, Eddy claimed that, on two dates in mid-November 2005, a fellow inmate placed an unknown and poisonous substance into Eddy's mouth while he was asleep. On November 18, an "altercation" occurred between the two inmates. According to Eddy, prison officials searched him and transferred him to the Violence Control Unit (VCU), where he did not have access to his belongings, and, several days later, began an investigation for criminal prosecution. He claims he requested but did not receive written notice of this investigation.¹

¶4 Eddy argued that only the sheriff has jurisdiction over crime scene investigations, only "persons trained in collecting forensic evidence are authorized by the county sheriff to investigate a crime scene," only sheriff employees are "authorized to give *Miranda*² right warnings," ADOC has no authority to secure and investigate crime scenes, and his transfer to the VCU "activated" the Arizona Rules of Criminal Procedure, including

¹Prison officials notified Eddy that he was being investigated for having committed a criminal assault not as a disciplinary violation, and that inmates do not receive a copy of the paperwork created in criminal investigations.

²*State v. Miranda*, 384 U.S. 436, 86 S. Ct. 1602 (1966).

his right to appointed counsel for the pending charge. Alternatively, Eddy argued, if ADOC employees have authorization to secure and investigate crime scenes, the lack of written notice about the criminal investigation violated his right to due process. Eddy also suggested that his transfer to isolation in the VCU served two purposes—“criminal prosecution” for the assault charge and a disciplinary reduction in his earned release credits, which he now claims constituted a violation of his right to be free from double jeopardy. Finally, Eddy noted he was refused access to personal belongings, including legal paperwork, suggesting that prison officials were impeding his access to the courts and depriving him of property.

¶5 The state moved to dismiss the petition pursuant to Rule 12(b)(6), Ariz. R. Civ. P., 16 A.R.S., Pt. 1, and the trial court granted the motion on the ground that none of Eddy’s claims challenged the legality of his incarceration, which is the purpose of habeas corpus. The court found moot Eddy’s motion for a “declaratory judgment on due process.”

¶6 On appeal, Eddy argues the trial court erred in dismissing his petition and denying him an evidentiary hearing, repeating the complaints he presented below. He also contends the court should have looked beyond the habeas corpus form to determine whether he had a right to any relief.

Discussion

¶7 When reviewing dismissals under Rule 12(b)(6), courts “assum[e] the truth of allegations in a complaint or habeas petition, unless controverted by undisputed facts in the record.” *Roberts v. Corrothers*, 812 F.2d 1173, 1177 (9th Cir. 1987). “The issuance of a

writ of habeas corpus is within the sound discretion of the trial court and will not be disturbed on appeal unless there is an abuse of that discretion.” *Salstrom v. State*, 148 Ariz. 382, 384, 714 P.2d 875, 877 (App. 1986).

¶8 Arizona recognizes only one purpose for a writ of habeas corpus—immediate and absolute release from custody. *See Brown v. State*, 117 Ariz. 476, 477, 573 P.2d 876, 877 (1978); *Long v. Ariz. Bd. of Pardons & Paroles*, 180 Ariz. 490, 494, 885 P.2d 178, 182 (App. 1994). In *Brown*, an inmate was not permitted to contest the loss of time credits through a habeas corpus proceeding. 117 Ariz. at 477, 573 P.2d at 877. Nor was this form of relief held to be proper for an inmate challenging the revocation of limited parole, even though the court characterized the parole as a form of custody. *Sims v. Ryan*, 181 Ariz. 330, 332, 890 P.2d 625, 627 (App. 1995).

¶9 Eddy is serving three, concurrent life sentences. He has not sought immediate, absolute release from custody but only relief for an allegedly improper transfer to the VCU. Therefore, even assuming all Eddy’s allegations are true, the trial court did not abuse its discretion in granting the state’s motion to dismiss. *See Brown*, 117 Ariz. at 477, 573 P.2d at 877; *Long*, 180 Ariz. at 494, 885 P.2d at 182.

¶10 Eddy also asserts that the trial court should have “look[ed] to substance and not to form,” suggesting the court erred by not treating his petition as one for special action. *See Long*, 180 Ariz. at 494, 885 P.2d at 183 (court may grant appropriate relief even though writ applied for not properly drawn). Eddy has failed to establish, or even argue, that the trial

court abused its discretion in not doing so. Nor did he raise or seek this alternative avenue of relief below. We therefore cannot say the trial court erred or abused its discretion.

Disposition

¶11 The trial court's dismissal of Eddy's habeas corpus petition is affirmed.

PHILIP G. ESPINOSA, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

J. WILLIAM BRAMMER, JR., Judge